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Brief of Rucker for Appellee

Filed January 24, 1898.

IN THE

Supreme Court of the United States

JANUARY TERM, 1898.

THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, *Appellant*,

vs.

THE BOARD OF PUBLIC WORKS OF THE STATE OF WEST VIRGINIA, *Appellee*.

Brief of the Attorney General of West Virginia, for Appellee.

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Brief of the Attorney General of West Virginia, for Appellee.

Associate counsel in this case have already filed a brief for the appellee, which I think fully covers most of the questions involved, and answers the points made by the counsel for the appellant, and I shall therefore devote my attention to the discussion of only one or two points which have been mentioned but perhaps not fully discussed.

Counsel for the appellant insist that the defendants' demurrer and motion to dissolve the injunction in the Court below, should both have been over-ruled, and in support of this contention, give six reasons, which reasons form the basis of the principles upon which the plaintiff relies in its hope to succeed in this proceeding. In other words, these reasons all relate to the merits of the suit and not to the form of the pleading or, any technical questions. In order that I may the better make my meaning clear, I quote these reasons which are as follows:

"First.—Because the taxation of plaintiff's bridge mentioned and described in the bill, as a separate structure from the railroad, instead of as a part of the railroad, is illegal and improper.

Second.—Because the defendants have taxed said bridge not only as a separate structure, but also as a part of defendant's railroad.

Third.—Because the defendants failed to notify the plaintiff, even after being requested to do so, either of the amount of the taxes, assessed against the plaintiff, or of the manner in which said taxes were assessed.

Fourth.—Because the assessment and collection of the said taxes, under the circumstances of the case, would deprive the plaintiff of, its property without due process of law.

Fifth.—Because the taxation of plaintiff's bridge, both as a part of plaintiff's line of railway and as a separate structure, is an unwarranted and illegal interference with inter-state commerce.

Sixth.—Because the tax complained of by the plaintiff constitutes a cloud upon the plaintiff's title to the said bridge."

I desire to discuss but two of the points relied on—the first and the last—the others having been fully covered, in my opinion, by my associates in their brief filed herein.

IS THE TAXATION COMPLAINED OF IMPROPER?

Counsel for the plaintiff seem to be very positive that this is an improper exercise of the taxing power of the State, but it seems to me that their position is not sustained by either authority or reason. It is certainly true that such taxation has been held—by implication at least—to be legal and proper in the Court of last resort in the State of West Virginia, where this bridge is situated, and that the Courts of this State have permitted such taxation for a long number of years. In the case of the *Pittsburg, Cincinnati, Chicago & St. Louis Railroad vs. The Board of Public Works* (*28 W. Va., 264*) in which the plaintiff in this proceeding was the plaintiff, and the question involved was the correct valuation of this same bridge, the Court declined to interfere with the assessment, and held that the action of the Circuit Court in supervising the assessment and valuation of railroad property, was merely administrative, and not subject to review or correction by the Court of Appeals. Counsel for appellant misconstrue the scope and effect of this decision. The Court only passed on the question of the valuation of the property, not the right to tax it at all. The Court says:

"Under our Consititution the Supreme Court of Appeals of the State has no power to review by writ of error or appeal, the decisions or orders of inferior tribunals, officers or boards as to matters

which are simply administrative or legislative and not strictly judicial in their nature, except where such power may be expressly conferred by the Constitution."

Had the taxation itself been illegal or improper, it would have been the manifest duty of the Court to relieve the plaintiff.

But the counsel for the appellant contend that this bridge should not be assessed at any higher rate than other portions of the plaintiff's track, because its carrying capacity is no greater, that the expense of its construction is not to be considered, and that the Code of West Virginia, ch. 29, sec. 63, provides what bridges shall be taxed, and as bridges, such as the one under consideration, are not mentioned in this section, that, by implication, the law of the State necessarily excludes them. This reasoning at first may appear sound, but is not supported by every day experience in matters of taxation. Taxable value is ascertained just as the value of this bridge was, by estimating the worth of the property. If the plaintiff were going to sell its property, and for that purpose should divide its line of railroad, selling that portion thereof in West Virginia to one purchaser, and the bridge to another, it is scarcely probable that it would be willing to sell this bridge at the same price it would any other 1580 feet of its track. Besides the very cost of the bridge gives it an additional value over the same length of track elsewhere, by preventing competition and giving the road, by reason of this bridge an advantage over less fortunate competitors and thus bringing more additional business than so much track. The Board of Public Works has assessed this property in accordance with well-established principles, that is, according to its market value.

The section of our Code referred to, is given in full on page 33 of the appellant's brief, and even a casual reading will show that it refers alone to toll bridges, and has no possible reference to bridges such as we have under discussion. It is certainly straining the construction to say that this means that no other bridges shall be assessed or taxed. Such a law would be unreasonable. To say that an individual, or corporation, may own and use for its own convenience and profit a bridge, or other property, and the same not be subject to taxation until the owner charges *others* for the use of it, would be as unreasonable as to say that no man who keeps a carriage for his own use and pleasure, should [illegible] be taxed thereon unless he charges others for riding in or using it.

The case of *Schmidt vs. Galveston, etc.*, cited with a great

deal of confidence by counsel for appellant, is under the Texas Statute, which is entirely different from the corresponding Statute of West Virginia. I have given the Texas Statute in full, and also the statute before it was amended in 1885, in the appendix to this brief. It provides that the railroad companies shall return for taxation "the whole length of their road bed and the value thereof per mile, which valuation shall include right of way, road-bed superstructure, etc.," (Sayles' Texas Civil Statutes, Sec. 4686) thus clearly providing that the superstructure shall be taxed with the roadbed. The Statute before amendment provided that "superstructure" should be construed to mean the "ties, chairs, rails, spikes, frogs and switches, whether such superstructure be laid on land or on artificial foundations." (Revised Statutes of Texas, 1879, Sec. 4686.)

This construction would seem to be broad enough to cover bridges, but as though the Legislature found this construction might exclude this character of property, when the law was amended in 1885, the language was changed so as to make the valuation include the superstructure, and the construction limiting its meaning was omitted, showing clearly that the Legis lature intended the value of the superstructure, including bridges as a part thereof, to be returned and valued by the officers of the various railroad companies as a part of the mileage, with the other property of the company. In this case counsel for the appellant make no claim that the value of this bridge was included in the return made to the Auditor, but try to evade this by saying that this bridge was worth no more to the owner than the same number of feet of track. If this rule is to prevail in taxation, the farmer should pay no more on a fine horse than on a common one, because one does as much work as the other, and the man who carries a fine watch should have his property assessed no higher than the cheapest grades, because one performs the same office as the other.

This Texas decison is under a statute so different from the corresponding West Virginia Statute on the same point, as to render comparison impossible, but if it shows anything, it clearly shows that without such a statute, bridges may be assessed and taxed as separate structures in addition to the mileage of track. Even under this statute the Court held merely that "a bridge owned by a railroad company on its line of road, is properly returned for taxation as so much mileage of railroad and cannot again be taxed

as a bridge." In other words, the Court decided that a bridge is "superstructure" and taxable as such. There the State had taxed the bridge as a portion of the track, and the city of Galveston tried to again tax it as a bridge. In the present case while the Board of Public Works may have assessed a larger mileage of track than the appellant owned, it is certain that the bridge was not intentionally included in this mileage, and the error in the length—if an error was committed—was made by reason of the fact that the appellant made a false return, including the length of this bridge, but not its value, with its track, thereby deceiving the Board, for the purpose of raising the question of double taxation. The very authorities quoted by counsel for the appellant show that this same bridge was assessed, *as a bridge*, as far back as 1885, (*see P. C. C. & St. L. R'y Co. vs. Board of Public Works, supra*) therefore, when in its return of the property in 1894, it returned this bridge as mileage of track, it did so well knowing through its officers, that this return was calculated to deceive.

The Texas Statute expressly provides that the value of the superstructure *shall* be included with the value of the roadbed, while the West Virginia Statute fails to do this. In the case of *Schmidt vs. Galveston*, etc., this "superstructure" was returned and valued with the value of the road, and consequently the Court said was properly taxed, but in this case the plaintiff's bridge has never been returned for taxation at all, and therefore, it really is not taxed at all, except as a separate structure.

The only other point relied on by the appellant that I care to discuss, is the sixth and last one.

DOES THIS TAX CONSTITUTE A CLOUD ON THE PLAINTIFF'S TITLE?

This point is evidently urged to give equity jurisdiction of the subject matter. It has been repeatedly held that Courts of Equity will take jurisdiction of tax-cases where the tax complained of is unjust and improper and creates a cloud on the title to real estate, but I cannot see how a cloud on plaintiff's title to reality is created by a levy on one of its engines for the purpose of subjecting it to the payment of the tax on the plaintiff's bridge. There is no evidence in the record to show that this levy is not sufficient to pay the amount of the tax, but even were it so there is nothing in this case that would change it from the principle generally governing any other case of this character. Any adjudicated claim held by

one person against another, in one sense of the word, constitutes a lien on the property of the debtor, and to that extent creates a cloud on his property, but I cannot see that the claim of the State against the plaintiff in this case, is in any way different from other claims of the same character. It certainly will not be contended that every judgment obtained, even though unjustly, by one person against another, would entitle the injured party to resort to a court of equity for protection and relief, even though this judgment should constitute a lien on the real estate of the injured party. As stated above, the record not only fails to show any attempt on the part of the State to interfere with the control or ownership of the plaintiff's reality, but it does show that the only levy made to collect the tax in this case, was the levy on the engine, which is personal property, and which would presumptively be sufficient to satisfy the claim of the State.

The law laid down in *Dow vs. The City of Chicago, 11 Wall, 108*, has been followed by this Court ever since, and clearly states and affirms the principle that a court of equity will not interfere to restrain the collection of taxes on the sole ground that the taxes are illegal. "There must exist in addition special circumstances, bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, throw a cloud on the title of the complainant."

Mr. Justice Field, in delivering the opinion of the Court, in this case, refers approvingly to the case of *Cook County vs. C. B. & Q. R. R. Co., 35 Ill., 365*, in which it is held that "a court of equity would never entertain a bill to restrain the collection of a tax, except in cases where the tax was unauthorized by law, or where it was assessed upon property not subject to taxation," and that even in such cases, jurisdiction would not be taken, "without special circumstances showing that the collection of the tax would be likely to produce irreparable injury or cause a multitude of suits."

This decision was closely followed in *Hannewinkle vs. Georgetown, 15 Wall, 557.*

In the case of *Union Pacific Railway Company vs. Cheyenne (113 U. S. 516)*, the same doctrine was sustained, and while in that case the Court took jurisdiction, on the ground that the collection of the taxes complained of would create a cloud upon the title of

the complainant to the real estate upon which the tax was assessed, the case is so different from the one involved in this suit, that it would scarcely admit of comparison. In the opinion, the learned Judge says; "It cannot be denied that bills in equity to restrain the collection of taxes illegally imposed have frequently been susteined. But it is well settled that there ought to be some equitable ground for the relief besides the mere illegality of the tax; for it must be presumed that the law furnishes a remedy for illegal taxation. It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage, or be subject to vexatious litigation, if he were compelled to resort to his legal remedy alone. For example, if the legal remedy consisted only of an action to recover back the money after it had been collected by distress and sale of the tax-payer's lands, the loss of his freehold by means of a tax sale, would be a mischief hard to be remedied. Even the cloud cast upon his title by a tax under which such sale could be made, would be a grievance which would entitle him to go into a Court of Equity for relief.

This is the strongest case I have been able to find in favor of the appellant's contention, and I have quoted from it at length to call attention to the fact that the principles upon which the decision is based, do not apply in the present instance, and the opinion of the Court clearly shows that cases such as appellant makes here, are excluded from the rule under which this case was decided.

In this case (*Union Pacific Railway Company vs. Cheyenne, supra*,) the matter involved was a tax levied on a number of lots in the city of Cheyenne, which had been laid out by the complainant and offered for sale, and as all the property of the complainant including these lots, had already been assessed for taxation by the Board of Equalization, and the levy of this city tax would be double taxation and operated so as to prevent a sale of the lots, under the circumstances, and for the further reason that the plaintiff had no legal remedy without the bringing of a large number of suits to recover back from the city the taxes piad, the Court held that in this case equity would take jurisdiction and inhibit and restrain the collection of this tax. None of these circumstances are shown in the present case. Complainant will not contend that it would require a number of actions to settle this matter in the courts of law, and certainly will not contend that it is prevented from making sale of its property by reason of the cloud created by this tax.

The principles laid down in the *Union Pacific Railway Company vs. Cheyenne*, are followed by the State Courts of West Virginia. In the case of the *C. & O. R. R. Co. vs. Miller, 19 West Virginia, 416*, the Court says, "The right to sue a State officer when the State cannot be sued, either to require or to inhibit a ministerial duty, has been repeatedly recognized," and cites a number of authorities to sustain this proposition. This we think is certainly the law and the only trouble the complainant has is that the principles laid down in the cases quoted from do not apply in its case.

SHOULD A COURT OF EQUITY TAKE JURISDICTION?

It is very seldom that courts of equity interfere in cases involving the collection of taxes, and only when for some special reason, as in the case of the *Union Pacific Railway Company vs. Cheyenne—supra*, where the necessities of the case almost demand the intervention of courts of this character. This rule is most clearly and positively stated in R. R. tax cases, *2 Otto 92 U. S. 575*. The Court says, "While this Court does not lay down any absolute rule limiting the powers of a court of equity in restraining the collection of taxes, it declares that it is essential that every case be brought within some recognized rules of equity jurisdiction, and that neither illegality nor irregularity in the proceedings, nor error, nor the hardship nor injustice of the law, provided it be constitutional, nor any grievances which can be remedied by a suit at law, either before or after payment of taxes, will authorize an injunction against its collection." Applying these principles to the present case, there is nothing in the complainant's bill with the exception of the bare statement that the assessment of this tax creates a cloud on the complainant's title to realty, which question I have discussed above, that would give a court of equity jurisdiction. In order that this jurisdiction should attach, it is necessary not only that the tax should be illegal, but that there should be no adequate remedy at law by which the complainant could be relieved from the effects of this illegal tax. Associate counsel in the brief filed in this case, have I think, clearly shown that the plaintiff had a full and complete remedy provided in the West Virginia Statutes. Chapter 39, section 67, Code of 1891, provides that after the Board of Public Works assesses the value of railroad property within the State, the Auditor shall notify the officers of the road of this assessment, and the decision of the said

Board upon this question shall be final and binding, unless the same be appealed from within 30 days after such decision comes to the knowledge of the President, Vice-President, Secretary or principal accounting officer, or the attorney of the corporation or company transacting business for it in the county wherein the seat of government is, etc. The same Statute further provides the manner in which the appeal may be taken by the Company complaining of the assessment from the decision of the Board of Public Works. This appeal shall be made to the circuit court of any county through which its road runs, and where the property improperly assessed is situated, and such appeal shall have precedence over all other cases in the court. It further provides, "The court shall hear all such legal evidence on such appeal as may be offered by the State, county, district or municipal corporation, and by the corporation or company taking such appeal."

The complainant attempts to evade this law by saying that it received no notice of this assessment until the 19th day of January, 1895, and that as these taxes were payable on the 20th of January, 1895, in order that the complainant should be entitled to the discount of 2½ per cent. on the same, that it had no time within which to make this appeal provided for in this section, and therefore was without legal remedy. This may all be admitted, and still the plaintiff would not be entitled to the relief asked. In the language of the case above referred to—*R. R. Tax Cases, supra* "neither illegality or irregularity in the proceedings, nor error or excess in the valuation, nor the hardship or injustice of the law, provided it is constitutional," will authorize an injunction to restrain the collection of the tax. The most that can be said in this case—even admitting plaintiff's contention on this point to be true—is that the law is unjust and that it suffered a hardship by reason of this unjust law. I have not considered the argument of counsel for the appellant that this law is unconstitutional, for the reason that the appellant has cited no authority in support of this proposition, and the question has been fully and ably presented by my associates. In addition to these reasons I will add that the Supreme Court of West Virginia in the case of *Wheeling Bridge & Terminal Railway Company vs. Paull—39 West Va. 142*—has decided that this law is not in conflict with the State Constitution, and while the contention of the plaintiff is that it violates the Federal Constitution, this decision is exactly in point, for that part of the Fourteenth Amendment of the Federal Constitution upon

which the plaintiff relies, is copied *verbatim* in the State Constitution. (*See Const. of West Va., Art. III, Sec. 10.*)

But even if the action of the Board of Public Works—or of the Auditor—prevented the plaintiff from exercising its legal remedy before this tax was levied, it still has a legal remedy by paying this tax, and then suing the State or officer to whom it was paid in the United States Court, as it has brought this suit, or by suing the officer to whom it was paid in the State courts. These remedies were, and are certainly open to the plaintiff if it desired to avail itself of them, and it is well settled that a court of equity will not interfere by injunction to restrain the collection of a tax when the complainant has a legal remedy either before or after the payment of the tax, (*see R. R. Tax Cases, Supra*). There can be no question that the plaintiff could have brought his action in the Federal Courts, either against the State of West Virginia, or the officer collecting the tax, to receive back the erroneous taxes paid, and it has been decided by the Supreme Court of West Virginia (*C. & O. Railway Co. vs. Miller, supra*) that such an action may be maintained in the State Courts against the officer, although no suit can be brought in those Courts against the State.

If the plaintiff has, or had, a remedy at law, a court of equity will compel him to seek and rely upon it. Injunction is an extraordinary remedy, and only to be resorted to when other remedies fail. The prompt payment of taxes is necessary for the welfare of every State, and should be enforced by the Courts.

Most respectfully submitted,

EDGAR P. RUCKER,
Attorney General.

REVISED STATUTES OF TEXAS, 1879.

Art. 4686. "It shall be the duty of every railroad corporation in this State to deliver a sworn statement, on or before the first day of June in each year, to the assessor of each county and corporated town into which any part of their road shall run, or in which they own or are in possession of real estate, a classified list of all real estate owned or in possession of said company in said county or town, specifying—

1. The whole number of acres of land owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of their superstructure and value thereof; and construing "superstructure" to mean the ties, chairs, rails, spikes, frogs and switches, whether such superstructure be laid on land or on artificial foundations.

3. The buildings, machinery and tools therein belonging to the company or in their possession, describing them by location, with the estimated value."

SAYLES' TEXAS CIVIL STATUTES.

Art. 4678. "RAILROADS, TELEGRAPHS, ETC. All railroad, telegraph, plank road and turnpike companies, shall list all of their real and personal property, giving the number of miles of road-bed and line in the county where such road-bed and line is situated, at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the comptroller." (Act August 21, 1876; 15 Leg. p. 275.)

Art. 4686. "RENDITION BY RAILROADS. It shall be the duty of every railroad corporation in this State, to deliver a sworn statement, on or before the first day of June of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run, or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town, or city, specifying; 1st., the whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds owned, possessed or appropriated for their use, with a valuation affixed to the same; 2nd, the whole length of their road-bed and the value thereof per mile, which valuation shall include right of way, road-bed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road; 3rd, all personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this State." (Amendment March 28th, June 30th. 1885; 19 Leg. p. 61.)

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THE BOARD OF PUBLIC WORKS OF THE STATE OF WEST VIRGINIA, *Appellee.*

Brief for Appellee.

The principal question here involved relates to the right of the State of West Virginia to assess and collect, for its own and for County, District and School District purposes, a yearly tax upon the railroad bridge spanning the Ohio River in Brooke County, owned and used by the appellant. Our contention is that it is properly taxable as a building or structure, at a value ascertained under the law, and is not to be taxed, as claimed by the company, simply as a portion of the railroad track, upon a valuation corresponding to other portions thereof.

The statutory provisions governing tax assessments upon railroad property are found in Code of West Virginia, chapter 29, sec. 67. These are practically a transcript of the Act of the Legislature, passed February 22, 1883. This section will be printed and attached hereto.

It will be observed that West Virginia has adopted the plan of assessment in use in several of the other states, as far as concerns the real estate of railroad corporations. Such property is separately assessed in the county in which it is situated and the tax, when collected, is distributed, the state, county and sub-divisions each receiving its ascertained proportion. This system is of long standing, the act of December 3, 1863 (Acts of the Legislature, 1863, ch. 118, section 52) having provided that the president, secretary or principal ac-

counting officer of every railroad company shall return, with a view to taxation, "the proportional value of all locomotives and other rolling stock, and the value of all other personal and movable property, money and credits shall be added to the stationary and fixed property and real estate and shall be apportioned by such officer to each county through which the road passes pro rata, in proportion to the fixed property and real estate belonging to the company in such county; and all property so listed shall be subject to pay the same taxes as other property listed in such county. Said officer shall, on or before the first day of April in each year, make out and return such pro rata valuation of the real and personal property, and money and credits of such company, in the several counties through which such railroad passes."

This view may not be acceded to by the learned counsel opposed. It has been contended that if there is any distinction between systems, the one which in this state obtains is essentially the unit system. But this must be founded upon a misconception. It is true that under the paragraph of sec. 67, designated as the second, the appellant is required to return the number of miles of road without the state as well as within, but this has relation to taxes upon rolling stock and not upon real estate. The third is one affecting the latter and it limits as to locality; and so as to the fifth. The property "in each county" is to be returned. The board of public works, under paragraph eight, is directed to "assess and fix the fair cash value of all the property of said corporation or company * * in each county in which the railroad of any such corporation or company runs." Appeals are allowed from decisions of the board "as to the assessment and valuation made within each county through which its road runs, to the circuit court of such county." These and other provisions would be inappropriate under the unit plan. Palpably, we think it was contemplated that each county should have the benefit of taxes upon the property within its limits.

The system of taxing by counties has been recognized as a proper one by state decisions. The Mohawk &c. v. Clute, 4 Paige 384; Railroad v. Town, 16 Barb. 244; Tax Cases, 12 Gill & J. 118, 153; Providence v. Wright, 2 R. I. 459; People v. Railroad Co., 34 Cal. 656; Sangammon &c. v. County of Morgan, 14 Ills. 163; Huntington v. C. P. R. R. Co., 2 Sawyer 510, 511.

This court has recognized the right of the several states to exercise a discretion as to principles and methods. Thompson v. Pacific &c.,

9 Wall. 579, 591; State Tax Cases, 15 Id. 319; Delaware Tax Cases, 18 Id. 208, 231; Home Ins. Co. v. New York, 134 U. S. 594.

It may be that in states which have the unit system there can be no severance or dislocation of a part, a station house or bridge, for illustration. But it is otherwise where the property is taxed as belonging to a given locality or political subdivision. In the latter case, taxation as a whole, with apportionment, is impracticable; and the decisions in such states lack pertinency.

The third paragraph contemplates a return of the railroad track in each county. The fifth relates to other real estate. We quote:

"Fifth. Its depots, station houses, freight houses, machine and repair shops and machinery therein, and all other buildings, structures and appendages connected thereto or used therewith, together with all other real estate other than its railroad track, owned or used by it in connection with its railroad, and not otherwise taxed, including telegraph lines owned or used by it, and the fair cash value of all buildings and structures, and all machinery and appendages and of each parcel of such real estate, including such telegraph line, and the cash value thereof in each county in this state in which it is located."

This expressly requires a return of all buildings and structures belonging to the corporation affected. The words employed include the bridges of the company, certainly any bridge over the Ohio river. That a railroad bridge is a building or structure is evident. Under any of the definitions, it is either a building or a structure, in some, one of the words being used and in some, the other. Jacob, Law Dict.; Bouvier, Law Dict.; Bridge Proprietors v. Hoboken Co., 1 Wall. 147, 148; Chicago &c. R. Co. v. Sabula, 19 Fed. Rep. 180; Enfield v. Hartford, 17 Conn. 56; Tolland v. Willington, 26 Id. 582; Whitall v. Freeholders, 40 N. J. L. 305. And the bridge in question is declared to be a "lawful structure" by Act of Congress of July 14, 1862. 12 U. S. Statutes at Large, 569.

No difficulty seems to have been experienced in sustaining the separate taxation of bridges where the local or county plan prevails. Cass Co. v. C. B. & Q. R. Co., 25 Neb. 348; Providence v. Wright, 2 R. I. 459. And see, State v. Mutchler, 42 N. J. L. 461. In Appeal &c. v. Western Maryland &c., 50 Md. 276, it was held that a tunnel was not properly taxable, but upon the ground solely that a special statute had expressly provided against the taxation of bridges and tunnels. We may assume that the decision would have been different, if general principles had been applied.

The statute may not be happily worded, yet its meaning is reasonably clear. "All other buildings and structures" are words of general import intended to cover and include any property of that class not specifically mentioned; and "appendages" relates to such other buildings and structures. Transposing slightly, we may read it thus: Its depots, station houses, freight houses, machine and repair shops, and all its other buildings and structures, together with the machinery in such machine and repair shops and the appendages connected or used with such buildings and structures. The correctness of this rendering appears from the text itself; and is further evidenced by the succeeding clause providing for a report of the "fair cash value of all buildings and structures and all such machinery and appendages." Nor do we regard it as significant that bridges are not specifically mentioned. Using words of general description, it was no more necessary for the legislature to include them in terms than it was to mention water tanks, car houses and towers, all of which appear in exhibit A of bill as property properly the subject of assessment.

The bill sets up that the bridge has no greater earning capacity than so much ordinary track. We had not supposed that this is the criterion of value. Taxation of real property does not depend upon profits or wholly upon present use. "The value of land depends largely upon the use to which it can be put, and the character of the improvements upon it." This is quoted approvingly in P. C. C. & St. L. Co. v. Backus, 154 U. S. 421. The board is empowered to "fix the fair cash value of all the property of said corporation." The cash value of the bridge is not rated by its capacity to make profits under existing circumstances. Unlike tunnels and ordinary bridges, it would have a large pecuniary value if the railroad track were to be removed. It could be readily turned into a highway for the use of travelers and shippers of freight. Its abutments, certainly, could be used for different purposes. The materials would be valuable even if displaced. The right to have and maintain such a structure has a value.

It has been contended that there was a failure of the board to tax other bridges of the appellant and that this militates against the assessment. Several replies occur: 1. The bill is silent on this head. 2. No bridges having been returned, it is not to be assumed that the board had knowledge of their existence. 3. Such failure is something of which complaint cannot be made, for the reason that the plaintiff was itself in fault, and for the further reason that it was not

prejudiced by the omission. It would be something novel to strike down an assessment on certain property because other property has been overlooked. 4. It will not be pretended that there is any bridge over the Ohio, belonging to the plaintiff, other than the one assessed. Its ordinary bridges may be subject to taxation, but if so, with greater reason is this one thus affected, it spanning a navigable river and having been erected and being now maintained under the authority of the general government, unlike such others, the ownership of which is consequent upon condemnation or purchase.

A case has heretofore been cited for the plaintiff on this branch—Schmidt v. Galveston &c. (Texas) 24 S. W. Rep. 546. We have not been able to examine the Texas statute and doubt whether the decision is authority outside of the state. The court was of opinion that the bridge was properly taxed as mileage. We infer from this that the two statutes differ. And estoppel seems to have been an element. It is not seen that it is so here.

The power to assess the tax complained of seems clear under the quoted paragraph. But without this, it is believed that it exists. Concededly, the railroad track may be assessed by the mile at a fair valuation. In effect, this may be said to have been done in this instance. The company returned its main track at a valuation of 13,000 dollars per mile. The board added 200,000 dollars for so much of the railroad bridge as is within the state. If it had fixed the valuation at, say 42,000 dollars per mile of track, the result would have been about the same, so far as the amount of tax is concerned. Assuming that the valuation on the bridge was not excessive, and there is no charge to that effect, it might well have been distributed over the 7.11 miles of main track within this state. The method adopted, even if irregular, would not seriously affect the assessment. The plaintiff would not be prejudiced by the inadvertence. Robertson v. Anderson, 57 Iowa, 165.

And still again: If by the words "railroad track" the track proper is meant, that is to say, the rails and ties in position, then the bridge and land upon which they rest would be liable to taxation under the fifth paragraph, which provides not only for the return of buildings and structures, but of "all other real estate other than its railroad track, owned or used by it in connection with its railroad and not otherwise taxed." In almost any view, the tax is authorized. The constitution of the state directs that "all property, both real and personal, shall be taxed in proportion to its value." Art. 10 Sec. 1. The

legislature will be presumed to have had this direction in mind, and to have intended the return and assessment of all the property of railroad corporations. It had no power to exempt any portion, and it did not attempt to exercise such power. On the contrary, all idea of omission or exemption is precluded by the words employed.

The bill does not show that the action of the board was new or novel. The case of P. C. C. & St. L. R. Co. v. Board, 28 W. Va. 264, which will probably be cited by opposing counsel, but which can have but little application here, as we imagine, indicates similar action as far back as 1885. The scope and methods of taxation have not undergone material change for many years. We may therefore assume that this and other railroad bridges over the Ohio have been assessed for a long period, if not for a period corresponding to the history of the state. We suggest that the doctrine of practical interpretation may be invoked. To quote from the opinion in Erie &c. v. Pennsylvania, 21 Wall. 498: "We see no such difficulty in the machinery for the collection of the tax as should make us doubt the intention of the legislature. That, in fact, the state at once proceeded to, and has constantly persisted in its exercise, affords strong evidence of its intention and of its undrstanding of its effect."

There are other matters alluded to in plaintiff's bill which, it may be urged, militate against the validity of the tax. We notice them briefly.

Double Taxation.

It is understood that the opposing claim is to the effect that the bridge, or so much as is within the state, was returned as a portion of the track; that it was taxed as such portion and also as a building or structure, upon a specific valuation; and that such taxation should be relieved against because double in its nature, even if the bridge was subject to specific taxation. Regarding this, several suggestions occur:

1. If there was error, the responsibility rests largely upon the company. In its return, it gave 7.11 miles of main track, omitting all reference to the bridge. The board accepted the return, but added the West Virginia portion of the bridge. It being liable to taxation, it should have been returned, the length being stated, and then the board could have acted advisedly, and no inadvertence would have resulted. The silence of the railroad officials prevented any reduction of the mileage, if a reduction should have been made.

2. Still assuming such liability, we submit that it was the duty of the company to pay, or tender, the taxes legally due—those upon the bridge and track, less, perhaps 1,518 feet of the latter. Railroad Tax Cases, 92 U. S. 576, 616. It would be inequitable to relieve against 3,060 dollars of legal taxes because of a mistake of less than 100 dollars. The proper sum to be paid or tendered could have been readily ascertained. At all events, some figures could have been named, some disposition to pay manifested. The auditor was under no obligations to make out separate bills or statements. The taxpayer is the one to decide how much of the presented account he is willing to pay. The plaintiff did decide in this instance, but did not tender all that was legally due.

3. The remedy was an appeal to the circuit court of the county. Appendix, p. 3. This right of appeal has been sanctioned. Wheeling &c. v. Paull, 39 W. Va. 142. This remedy is simple, inexpensive, and adequate, and should have been invoked. It was not, and the company is concluded.

4. The statute points out another method of correction. Application should have been made to the auditor for a rectification of the mistake, and none having been made, an injunction from a state court would not lie. Appendix, p. 5. There seems to be no good reason why the rule prescribed, it being a proper one, should not have been followed here.

5. Should the foregoing propositions be resolved against us, we suggest that an injunction would not lie for more than the excess—the tax on the 1518 feet of track.

Failure to Notify.

How the alleged failure of the defendants to give notice of the amount of taxes or the manner of assessment can be used effectively as a defense does not appear. It is admitted in the bill that such notice was received on the 19th of January next following the assessment. This was sufficient for any and all purposes.

1. Apparently, it is supposed that it is made the duty of the state officials to give such notice immediately after the board takes action. This theory seems founded on a misconception. It is believed that there is no such direction in the law. The board, after it procures the needed information, ascertains the taxable property and fixes values (Appendix, p. 3); after which the auditor certifies the result to the clerks of the courts of the different counties in which the property is situated and the values are then by the county courts appor-

tioned among the subdivisions of the county. Within thirty days after such apportionment it is certified to the auditor with the amount levied by the court upon each one hundred dollars' worth of property. Appendix p. 4. These and other provisions found in the statute require time—months, presumably. And a latitude is allowed. "As soon as possible" after the value is fixed and necessary information obtained, the auditor makes the assessment; and "as soon as possible," makes out and transmits a statement of the taxes so assessed or charged to one of the named officers of the corporation. Appendix, p. 5. No other notice is contemplated or needed. We may take it that the state officers performed their duty in this regard and in proper time, and especially as there is no averment in the bill charging fraud or dereliction of duty or even intimating that the auditor or other officer was or could have been able to give the requested information before it was in fact given.

2. The plaintiff was not injured by the failure.

The right of appeal is secured by the code and can not be affected by delay on the part of the auditor. An appeal can always be taken "within thirty days after such decision (as to value) comes to the knowledge of the president" or other named corporation official. Appendix, p. 3. Let it be that no notification was received until January 19, 1895. The plaintiff had thirty days thereafter in which to take the matter to the circuit court.

There was ample time for payment, and this, without reference to the appeal, which, if taken, would have postponed the day of settlement. The plaintiff found time and opportunity to pay the greater portion of the taxes before any levy was made or penalty added. And as to the remaining portion, its refusal to either pay or appeal precludes the defense of want of time.

Notice of the action regarding the bridge was not essential to the validity of the tax. State Railroad Cases, 92 U. S. 576.

Due Process of Law.

It is now claimed that the statute is unconstitutional, because it conflicts with the Fourteenth Amendment of the Federal Constitution. This constitutes no feature of the bill and for that reason will hardly be considered at the hearing.

If we are to judge from former arguments the specifications will probably be: 1. No state judicial tribunal exists which is empowered to hear and determine questions relating to taxes on railroad property. 2. Railroad corporations have no opportunity to be heard upon such

questions, except through their returns to the auditor. Of these, in their order:

1. We had not supposed that a hearing before a court, or opportunity for such a hearing, is essential to the validity of taxes. The contrary is believed to be the holding everywhere. McMillan v. Anderson, 95 U. S. 41; Kelly v. Pittsburgh, 104 U. S. 78. We quote from the opinion of Mr. Justice Miller in the latter: "Taxes have not as a rule, in this country since its independence nor in England before that time, been collected by regular judicial proceedings. The necessities of government, the nature of the duty to be performed, and the customary usages of the people, have established a different procedure, which, in regard to the matter, is, and always has been, due process of law."

2. Two replies occur. One is, that the statute does contemplate a hearing before the board, if one is desired. That tribunal is to consider any return made to the auditor and all the evidence and information furnished or obtained in the manner pointed out in the preceding portion of the enactment, together with "all such as may be offered by such corporation or company." This is sufficient. Under this, notice is required; certainly, may be demanded. And there is no averment in the pleadings that notice was not given, or that opportunity was withheld. The second is, that a full opportunity for a hearing is afforded by the appeal to the circuit court. Upon such an appeal the matters are fully heard. All proper evidence is to be considered, including such as is offered by the company appealing. Under all the decisions, this secures all legal rights, and is due process even if the proceedings before the board were not. Davidson v. New Orleans, 96 U. S. 97, 104; Hagar v. Reclamation District, 111 U. S. 701, 710.

Interstate Commerce.

We content ourselves with the statement that we regard the law as well settled by repeated decisions. A corporation doing an interstate business may not, perhaps, be taxed upon such business; but land and other property owned by it, situated in a given state, may well be taxed by such state, however the property may be employed. Ratterman v. W. U. T. Co., 127 U. S. 411; W. U. T.. C.. v. Mass., 125 Id. 530; Shelton v. Platt, 139 Id. 591; Henderson B. Co. v. City of Henderson, 141 Id. 679; Ficklin v. Taxing District, 145 Id. 1.

Courts will not ordinarily interfere with the collection of a tax.

To adopt the language of Mr. Justice Field, in Dows v. The City of Chicago, 11 Wall. 110: "It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom is involved the duty of collecting the taxes, may derange the operations of government and thereby cause serious detriment to the public." It may be questioned whether anything has been shown or urged warranting the interposition of a court of equity. In any event, the leaning will be in favor of the enactment and of the action of the taxing officers.

The importance of the question to the state, and especially to the local divisions in which railroad bridges over the Ohio river are situated, will at once be perceived. To strike down the taxes on such bridges, all of them constituting valuable property, would serve to hamper and derange financial affairs, thus affecting injuriously the public interests. To uphold them, would, in our judgment, not only avoid confusion and inconvenience, but would accord both with the letter and the spirit of the constitution of the state.

Respectfully submitted,

T. S. RILEY,
TH. MELVIN,
for Defendant.

APPENDIX.

Code of West Virginia, Chapter 29, Section 67.

"67. The president, vice president, secretary or principal accounting officers of any corporation or company owning or operating a railroad or railway, wholly or in part within this State, for the transportation of freight, or passengers, or both, for compensation, shall make a return in writing to the auditor on or before the first day of April in each year, which shall be signed and sworn to by one of said officers, showing in detail the following particulars for the year ending on the thirty-first day of December, next preceding, viz:

First. The whole number of miles of railroad owned, operated or leased by such corporation or company within this State.

Second. If such road so owned, operated or leased by such corporation or company be partly within and partly without this State, the whole number of miles thereof within this State, and the whole number of miles without the same, including its branches in and out of the State.

Third. Its railroad track in each county in this State through which it runs; giving the whole number of miles of road in the county, including the track and its branches, and side and second tracks, switches and turnouts therein, and the fair cash value per mile of such railroad in each county, including in such valuation such main track, branches, side and second tracks, switches and turnouts.

Fourth. All its rolling stock; giving a detailed statement of the number of cars, including passenger, mail, express, baggage, freight and other cars of every description, and the fair cash value of all such cars used wholly, or in part, in this State, distinguishing between such as are used wholly in this state and such as are used partly within and partly without the State; the whole number of engines, including their appendages used wholly or in part within this State, distinguishing between such as are used wholly within this State and such as are used partly within and partly without the same, and the fair cash value of such as are used wholly within the State, and such as are used partly within and partly without the State; and the proportional value of such cars and engines used by it partly within and partly without the State, according to the time used and the number of miles run by such cars and engines in and out of the State; and the proportional cash value thereof to each county in this State within which such railroad runs.

Fifth. Its depots, station houses, freight houses, machine and repair shops and machinery therein, and all other buildings, structures

and appendages connected thereto or used therewith, together with all other real estate other than its railroad track, owned or used by it in connection with its railroad, and not otherwise taxed, including telegraph lines owned or used by it, and the fair cash value of all buildings and structures, and all such machinery and appendages, and of each parcel of such real estate, including such telegraph line, and the cash value thereof in each county in this State in which it is located.

Sixth. Its personal property of every kind whatsoever including money, credits and investments, wholly held or used in this State, showing the amount and value thereof in each county.

Seventh. Its actual capital stock and the number, amount and value in cash, of the shares thereof; the amount of its capital stock actually paid in; the total amount of its bonded indebtedness, and of its indebtedness not bonded; its gross earnings for the year, including its earnings from its telegraph lines, which shall be stated separately, on the whole length of its road, including the branches thereof, in and out of the State, and also such earnings within this State on way freight and passengers, and the proportion of such earnings in this State on through freight and passengers carried over its lines in and out of the State, to be ascertained by the number of miles the same were carried by it within and the number of miles without the State.

Eighth. Its gross expenditures for the year, giving a detailed statement thereof under each class or head of expenditure. If any corporation or company fail to make such return to the auditor as herein required, it shall be guilty of a misdemeanor and fined one thousand dollars for each month such failure continues. Prosecutions for such failure shall be in the county wherein the seat of government is. If such return be made to the auditor, he shall lay the same, as soon as practicable thereafter, before the board of public works, and if such return be satisfactory to the board it shall approve the same, and by an order entered upon its records, direct the auditor to assess the property of such corporation or company, with taxes, and he shall thereupon assess the same as hereinafter provided. But if such return be not satisfactory to the board, or if any such company fail to make such return as herein required, said board of public works shall proceed in such manner as to it may seem best to obtain the facts and information required to be furnished by such return; and to this end the said board may send for persons and papers, and may compel the attendance of any person and the production of any paper necessary, in the opinion of said board, to enable it to obtain the information de-

sired for the proper discharge of its duties under this section. Any expenses necessarily incurred by said board in procuring such information shall be paid by the governor out of the contingent fund. If any person shall refuse to appear before said board when required by it to do so, as aforesaid, or shall refuse to testify before said board in regard to any matter as to which said board may require him to testify, or if any person shall refuse to produce any paper in his possession or under his control, which said board may require him to produce, every such person shall be guilty of a misdemeanor, and fined five hundred dollars and shall be imprisoned not less than one nor more than six months, at the discretion of the court. Prosecutions against any such person shall also be in the county wherein the seat of government is. As soon as possible after the board of public works shall have procured the necessary information to enable it to do so, said board shall proceed to assess and fix the fair cash value of all the property of said corporation or company hereinbefore required to be returned by it to the auditor, so far as the said board has been able to ascertain the same, in each county through which the railroad of any such corporation or company runs. In ascertaining such value the board shall consider any return which may have been previously made to the auditor by such corporation or company, and all the evidence and information it has been able to procure by the means aforesaid, and all such as may be offered by such corporation or company. And the decision of said board thereon made shall be final, unless the same be appealed from within thirty days after such decision comes to the knowledge of the president, vice president, secretary or principal accounting officer, or the attorney of such corporation or company transacting business for it in the county wherein the seat of government is, in the manner following. Any corporation or company claiming to be aggrieved by any such decision, may within the time aforesaid, appeal therefrom as to the assessment and valuation made within each county through which its road runs, to the circuit court of such county; and such appeal shall have precedence over all other cases on the docket of such court, and be tried in the shortest time possible after such appeal is docketed. The court shall hear all such legal evidence on such appeal as may be offered by the State, county, district or municipal corporation, and by the corporation or company taking such appeal. And if the court be satisfied that the value so fixed is correct, it shall confirm the same; but if it be satisfied that the value so fixed by said board is either too high or too

low, the court shall correct the valuation so made and ascertain and fix the true value of such property according to the facts proved, and certify such value to the auditor. In case the lists and valuations of the property filed with the auditor as aforesaid, be satisfactory to the board of public works, and in cases where an assessment of the property of such company is made by the board of public works as aforesaid, the auditor shall immediately certify to the county court of each county through which such railroad runs, the value of the property therein of every such company as valued or assessed as aforesaid, and it shall be the duty of such court to apportion the whole of such value between such districts and independent school districts in their county through which said road runs, as near as may be according to the value thereof, and then a proportional valuation to each municipal corporation in their county through which said road runs according to the value thereof. It shall be the duty of the clerk of the county court of every county through which any railroad runs, within thirty days after the county and district levies are laid by such court to certify to the auditor the apportionment made by the county court as aforesaid, and the amount levied upon each one hundred dollars' value of the property in the county for county purposes, and on the value of the property in each magisterial district through which such railroad is located, for district purposes. It shall also be the duty of the secretary of the board of education of every school district and independent school district through which the railroad runs, in each county, within thirty days after the levy is laid therein for free school and building purposes, or either, to certify to the auditor the amount so levied on each one hundred dollars' value of the property therein for each of said purposes, and it shall be the duty of the recorder, clerk or other recording officer of every municipal corporation, through which such railroad runs, within the same time after a levy is laid therein for any of the purposes authorized by law, to certify to the auditor the amount levied upon each one hundred dollars' value of the property therein for each and every purpose. Any clerk of a county court, secretary of a board of education, or recorder, clerk or other recording officer of a municipal corporation, who shall fail to perform any of the duties herein required of him, shall be guilty of a misdemeanor, and fined not less than one hundred nor more than five hundred dollars. In case of the failure of any such officer to furnish to the auditor the certificate herein required, the auditor may obtain the rate of taxation for any of said purposes from the copies of land books on file in his office, if

the same be found in such books, if not, in such other way or manner as he may deem necessary or proper for the purpose. As soon as possible after the value of the property of such corporation or company is fixed by the board of public works, or by the circuit court on appeal as aforesaid, and after he shall have obtained the information herein provided for to enable him to do so, the auditor shall assess and charge the property of every such corporation or company with the taxes properly chargeable thereon, in a book to be kept by him for that purpose, as follows:

First. With the whole amount of taxes upon its property for state and state school purposes.

Second. With the whole amount of taxes on its property, in each county through which its road runs, for county purposes.

Third. With the whole amount of taxes on its property in each magisterial district through which its road runs, for road and other district purposes other than free school and building purposes.

Fourth. With the whole amount of taxes on its property in each school district and independent school district through which its road runs, for free school and building purposes; and

Fifth. With the whole amount of its taxes on its property in each municipal corporation through which its road runs, for each and all of the purposes for which a levy therein is made by the municipal authorities of such corporation. And no injunction shall be awarded by any court or judge to restrain the collection of the taxes or any part of them so assessed, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this State, or that the same were fraudulently assessed, or that there was a mistake made by the auditor in the amount of taxes properly chargeable on the property of said corporation or company; and in the latter case no such injunction shall be awarded unless application be first made to the auditor to correct the mistake claimed, and the auditor shall refuse to do so, which facts shall be stated in the bill. The auditor shall, as soon as possible, after he completes the said assessments, make out and transmit by mail or otherwise, a statement of all taxes and levies so charged to the president, vice president, secretary or principal accounting officer of such corporation or company and it shall be the duty of such corporation or company so assessed and charged, to pay the whole amount of such taxes and levies upon its property, into the treasury of the State, by the twentieth day of January next after the assessment thereof, subject to a deduction of 2½ per centum upon the whole sum if the same be paid on

or before that day. If any such corporation or company fail to pay such taxes and levies by the said twentieth day of January, the auditor shall add ten per centum to the amount thereof, to pay the expenses of collecting the same, and shall certify to the sheriff of each county the amount of such taxes and levies assessed within his county; and it shall be the duty of every such sheriff to collect and account for such taxes and levies in the same manner as other taxes and levies are collected and accounted for by him. And when the district and independent school district taxes and levies are collected by him, he shall immediately pay the same to the treasurer of the proper district. Neither the county court of any county, nor any tribunal acting in any county in lieu of a county court, or otherwise, nor any board of education, nor the municipal authorities of any incorporated city, town or village, shall have jurisdiction, power or authority, by compromise or otherwise, to remit or release any portion of the taxes or levies so assessed upon the property of any such corporation or company; and when such taxes and levies are certified to the sheriff of any county for collection, as aforesaid, it shall be his duty to collect the whole thereof, regardless of any order or direction of any such county court, tribunal, board of education or municipal authority to the contrary; and if he fail to do so, he and his securities on his official bond shall, unless he be restrained or prohibited from so doing by legal process from some court having jurisdiction to issue the same, be liable thereon for the amount of said taxes and levies he may so fail to collect, if he could have collected the same by the use of due diligence. Any member of a county court, or tribunal acting in lieu thereof, or of a board of education, or of the council, or other tribunal of a municipal corporation, who shall vote to remit or release any part of the taxes so assessed on the property of any such corporation or company, shall be guilty of a misdemeanor, and fined five hundred dollars, and shall be removed from his office by the court by which the judgment of such fine is rendered, in addition to such fine. When such taxes and levies due to a municipal corporation are collected by the sheriff, he shall pay the same to the proper collecting officer or treasurer of such municipal corporation or otherwise, as the council, or other proper authority thereof may direct. And when such taxes and levies are paid into the treasury, as herein provided, the auditor shall account to the sheriff of each of the counties to which any sum so paid in for county levies belongs, for the amount due such county, and may arrange the same with such sheriff in his settlement

for the State taxes in such a way as may be most convenient; and the sheriff shall account to the county court of his county for the amount so received by him, in the same manner as for other county levies: Provided, that the taxes assessed for the last year of the term of office of a sheriff shall be paid to or settled with, the sheriff who was in office at the time the assessment was made. The amount so paid in for each district and independent school district shall be added to the distributable share of the school fund payable to such district, and paid upon the requisition of the county superintendent of free schools, in like manner as other school moneys are paid. The auditor shall certify to the county court of every such county, on or before the first day of April in each year, the amount with which the sheriff thereof is chargeable on account of the levy upon the property of such company. He shall also certify to the county superintendent of free schools the amount of such levies due to each district and independent school district in his county for free school purposes. The amount so paid in for each municipal corporation shall, as soon as received by the auditor, be paid over to the treasurer of the municipal corporation to which such taxes are due, or to such other officer of the corporation as the council may designate, and the auditor shall report such payment to the council. But the failure of the clerk of any county court, or the secretary of any board of education, or the proper officer of any municipal corporation, to certify to the auditor the levies or apportionment within the time herein prescribed, shall not invalidate or prevent the assessment required by this section, but the auditor shall make the assessment and proceed to collect or certify the same to the sheriff, as soon as practicable, after he shall obtain the information necessary to make such assessment. The right of the State, or of any county or district, or municipal corporation to enforce by suit or otherwise, the collection of taxes or levies, heretofore assessed, or the right to which has heretofore accrued, shall not in any manner be affected or impaired by anything in this chapter contained. All buildings and real estate owned by such company and used or occupied for any purpose not immediately connected with its railroad, or which is rented or occupied for any purpose to or by individuals, shall be assessed, with the taxes properly chargeable thereon, the same as other property of the like kind belonging to an individual. No such company or corporation as is mentioned in this section shall be exempt from taxation, whether the same has been or may be created, organized or operated by, under or by virtue of any general or special law or laws, or whether heretofore exempted from taxation or not, but this section shall apply to all such companies and corporations without distinction or exception."